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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 PATRICK J. BOOTH,

12 Plaintiff,

13 v.

14 A. GAFFNEY, et al.

15 Defendants.  
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NO. CV 18-5655-DOC (AGR)

ORDER ACCEPTING FINDINGS  
AND RECOMMENDATION OF  
MAGISTRATE JUDGE

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the other  
18 records on file herein and the Report and Recommendation of the United States  
19 Magistrate Judge. No objections to the Report have been filed. The Court  
20 accepts the findings and recommendation of the Magistrate Judge.

21 IT THEREFORE IS ORDERED that Defendants' motion to dismiss is  
22 GRANTED IN PART AND DENIED IN PART as follows:

23 (1) Defendants' motion to dismiss the Eighth Amendment claim against  
24 Defendant Fernandez is denied;

25 (2) Defendants' motion to dismiss the Eighth Amendment claim against  
26 Defendant Fekrat, and the due process claims against Defendants Gaffney and  
27 Gonzalez, is granted with leave to amend;  
28


1 (3) Defendants' motion to dismiss based on failure to exhaust  
2 administrative remedies is denied without prejudice; and

3 (4) Plaintiff is granted leave to file a First Amended Complaint. If Plaintiff  
4 chooses to file a First Amended Complaint, it must be filed within 30 days after  
5 entry of this Order, it must bear the docket number assigned to this case, be  
6 labeled "First Amended Complaint," and be complete in and of itself without  
7 reference to the original complaint, attachment, pleading or other documents.

8 The Clerk is DIRECTED to provide Plaintiff with a pro se civil rights packet.

9 If Plaintiff fails to file a First Amended Complaint, this action will proceed  
10 solely on (1) his Eighth Amendment claims against Defendants Gaffney and  
11 Fernandez, and (2) his retaliation claims against Defendants Gaffney and  
12 Gonzalez.

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14 DATED: May 28, 2019

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16 DAVID O. CARTER  
17 United States District Judge  
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